

IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case No: JS701/16

In the matter between:

PIERRE- JAQCE JANSEN VUUREN

Applicant

And

**THE LAND AND AGRICULTURAL DEVELOPMENT
BANK OF SOUTH AFRICA**

First Respondent

SAKHUMZI DIZA

Second Respondent

Heard: 18 October 2019

Delivered: 31 October 2019

JUDGMENT

LALLIE. J

- [1] The applicant was employed by the first respondent as a senior manager. Pursuant to the termination of the employment relationship he filed a statement of claim seeking relief based on the manner in which his contract of employment was terminated. Part of the relief he is seeking is an order declaring his dismissal related to the alleged operational requirements substantively and procedurally unfair.
- [2] After the first respondent had filed its response to the statement of claim and the parties had held a pre-trial conference, the first respondent sought leave to amend its response to the statement of claim by adding a second special plea. In which the first respondent responds to the applicant's claim that his dismissal for operational requirements of the respondent was procedurally unfair. The first respondent submitted that this Court lacks jurisdiction to adjudicate the applicant's claim based on the alleged procedural fairness of his dismissal for operational requirements as he should have sought relief for that claim before the dismissal as envisaged in section 189A(13) of the Labour Relations Act¹ (the LRA). Section 189A (18) of the LRA expressly precludes this Court from adjudicating a dispute about procedural fairness of a dismissal based on operational requirements referred in terms of section 191(5) (b) (ii) of the LRA.
- [3] The first respondent opposed the proposed amendment on the grounds that it does not disclose a defence to the applicant's claim. He submitted that the remedy in section 189A (13) was not available to him and does not constitute a bar to the proceedings.
- [4] When the application was argued the first respondent conceded that the claim based on the alleged procedural unfairness of the applicant's dismissal for

¹ Act 66 of 1996 as amended

operational requirements falls outside the jurisdiction of this Court. The first respondent justified making the allegations by arguing that some acts of procedural unfairness of a dismissal for operational requirements are inextricably linked to its substantive fairness and others have the effect of rendering the dismissal substantively unfair. Based on the concession made by the first respondent and the correctness of the legal basis of the second special plea, it must be upheld.

- [5] The first respondent sought a costs order *de bonis propriis* against the applicant's attorneys on the grounds that it asked them, in a lot of correspondence with its attorney to clarify his position on the issue addressed in this application. The first respondent further submitted that had the applicant made the concession he made in court on time, the application at hand would have been avoided. Counsel for the applicant opposed the grant of a costs order particularly because the applicant's attorneys were not warned beforehand that the order would be sought and placed in a position to defend themselves.
- [6] The first respondent's notice of intention to amend is silent on costs. Section 162(1) of the LRA provides that this Court may make costs orders according to the requirements of the law and fairness. When the applicant served his statement of claim on the first respondent it contained the allegations of the procedural unfairness of his dismissal for operational requirements. The first respondent had the right to raise the second special plea in its statement of defence without the applicant's approval or consent. The first respondent overlooked the need to file the second special plea and realised the need to file it later. Had the first respondent taken the decision to file the second special plea when the need first arose, the application at hand would have been avoided. Fairness requires that the first respondent take responsibility for its omission. A costs order is, in the circumstances not justified.
- [7] In the premises the following order is made.

Order

1. The application for leave to amend the first respondent's response to the applicant's statement of claim is granted.
2. There is no order as to costs.

Z. Lallie
Judge of the Labour Court of South Africa

Appearances:

For the Applicant: Mr M. Chavoos of Norton Rose Fulbright Inc SA
For the Respondent: Advocate P. Ellis SC
Instructed by: Jordan Inc.